

The KSM Trial and Republican Attacks

Lincoln Mitchell, Harriman Institute, Columbia University

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The recent attacks on the decision by President Obama and Attorney General Holder to try Khalid Sheik Mohammed (KSM), one of the masterminds of the September 11th terrorist attacks, constitute one of those political moments where partisan sniping dominates everything else. For many Americans where KSM is tried is something of a non-issue a technicality that has little bearing on their lives, so long as justice is served. However, for many Republicans, none more so than former New York City Mayor Rudy Giuliani it is an opportunity to get some media attention and take a cheap shot at the president.

Giuliani has gotten more publicity in the last six weeks or so than he has since his ill-fated presidential campaign collapsed more than a year and a half ago. Most of that publicity was not due to his doing but to those of Giuliani's New York Yankees as they won their 27th World Championship. The former mayor was present at almost every home game sitting in seats in the new Yankee Stadium that most Yankee fans would love to have, even if it meant spending nine innings with America's erstwhile mayor. By [vociferously attacking the Obama administration, Giuliani briefly made himself relevant again](#), albeit in a transparently silly and partisan way, accusing Holder and Obama of not taking the threat of terrorism seriously because they want to try KSM in a civilian court.

If it had been a Republican president who had called for KSM to be tried in New York, Giuliani almost certainly would have applauded the decision as giving New Yorkers a chance to host the trial of the man who sought to destroy their city. Moreover, if Obama had moved the trial out of New York on the grounds that a New York trial would give KSM a platform for his anti-American rhetoric, Giuliani and other Republicans would, not without reason, be lining up to accuse that president of cowardice and of lacking faith in America.

Other Republicans, most notably [John Ashcroft, have suggested that trying KSM in New York is a security threat and that New Yorkers will fear another attack if KSM is tried in their city](#). This assertion is even more transparently a case of partisan sniping than Giuliani's comments. Imagine if a former Democratic Attorney General suggested that the trial should be moved because otherwise New Yorkers would fear another terrorist attack. Giuliani would almost certainly be the first, and loudest, to yell that New Yorkers are afraid of nobody and demand the opportunity to sentence KSM in New York. Comments like those of Giuliani and Ashcroft amount to little more than partisan bickering, but the more serious attacks on Holder's decision have been based on his choice of locale for the trial, but for his decision to try KSM in a civilian court.

The president's critics argue that if the War on Terrorism is truly a war, than people like KSM who are captured overseas should be tried in military tribunals rather than civilian courts. This argument is not altogether unreasonable, as a strong case can be made that people like KSM are enemy soldiers and should be tried as such. It is, however, worth remembering that the debate

about the status of captured terrorist suspects did not begin with Obama. It was the Bush administration, specifically former Defense Secretary Donald Rumsfeld, who insisted that people like KSM were, in Rumsfeld's words, "(N)ot PoWs. They will not be determined to be PoWs." This decision was made so that the U.S. would not have to apply the rules laid out in the Geneva Conventions about the treatment of POWs to these terrorist suspects. Rumsfeld, and the Bush administration, settled on the awkward and legally ambiguous term "unlawful combatants" to describe the status of these people.

The Bush administration did not set a very good or clear precedent regarding treatment of captured terrorists like KSM; and the Obama administration has certainly not yet come up with a comprehensive solution to this dilemma. Holder's decision may be the best that can be done at this time, or it may be a mistake and a bad precedent. It is not, however, as Holder's critics suggest, a politically motivated move by the Attorney General or the administration. On the contrary, Holder has boxed himself into a no win situation here. If, for some reason, KSM is acquitted, many Americans will feel that justice was not served at that our government let a dangerous, and murderous, terrorist go free. If Holder, as is likely, gets a conviction and KSM receives either the death penalty or a very long prison sentence, the world will not, as some in the administration have suggested, look admiringly at the U.S. criminal justice system, but will assume that the fix was in before the trial even started.